

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NETCRAFT CORPORATION,

Plaintiff,

v.

EBAY, INC. and PAYPAL, INC.,

Defendants.

ORDER

07-C-254-C

This suit for patent infringement is scheduled for a claims construction hearing on November 9, 2007. Now before the court is plaintiff's motion to "strike" a DVD tutorial defendants filed in anticipation of the hearing. According to plaintiff, the DVD contains testimony from one of defendants' experts. Plaintiff seeks to "strike" the DVD because it "had no advance knowledge of the Tutorial," because the tutorial includes arguments about infringement and because plaintiff believes the purpose of the tutorial is to "circumven[t] the Court's [time] limits on the claim construction hearing,"

Plaintiff's motion is DENIED as unnecessary. Presumably, defendants wish to use the DVD as part of their presentation during the claim construction hearing. This court does not require parties to provide in advance materials they intend to use at the hearing,

so plaintiff's claim of "unfair surprise" is not well taken. Further, the parties are entitled to use their allotted time at the hearing however they wish, so long as their presentation relates to the construction of disputed terms. If defendants wish to use a DVD presentation to fill their allotted time, they are free to do so. To the extent either side advances new or irrelevant arguments at the hearing, the opposing party may make the appropriate objection at that time.

To the extent defendants intended to use the DVD not as part of its presentation but as a supplement to its briefs on claim construction, it will be disregarded. In construing the claim terms, I will not consider any argument that was not raised in the briefs or at the hearing.

Entered this 7th day of November, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge